

REMARKS

This is in response to the Office Action of September 4, 2007. Claims 7-10 are cancelled, without prejudice. No new matter is introduced by this Amendment. Entry of this Amendment in order to place the application into condition for allowance or into better condition for appeal is earnestly solicited. With this Amendment, claims 1-6 are before the Examiner for reconsideration.

Claims 7-10

Claims 7-10 had been rejected under 35 U.S.C. § 112 and under 35 U.S.C. § 102(b) on pages 2-3 of the outstanding Office Action. Claims 7-10 are cancelled hereinabove, thereby obviating these grounds of rejection.

Rejection of claims 1-6

Claims 1-6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US 6,193,986 B1 (Sakurada) in view of WO 01/58279¹ (Takahashi). The rejection is respectfully traversed.

The Examiner acknowledges that Sakurada fails to teach or suggest the sucrose acetate isobutyrate emulsifying agent which is expressly required by all of claims 1-6 herein. The Examiner contends, however, that Takahashi teaches sucrose acetate isobutyrate as an interchangeable equivalent of the sucrose fatty acid esters which are taught by Sakurada, and that accordingly the present invention is considered to be *prima facie* obvious.

In order to rebut any such *prima facie* case of obviousness, Applicants present herewith the Declaration under 37 CFR 1.132 of Makoto Ishikawa. Declarant provides test results which demonstrate that sucrose acetate isobutyrate exhibits effects that are unexpectedly superior to comparable effects provided by other sucrose fatty acid esters. Specifically, tests were conducted using several different sucrose fatty acid ester emulsifying agents with milk, yogurt, and a liquid food composition. The Declarant reports "that among sucrose fatty acid esters, only sucrose acetate isobutyrate ... remarkably exhibits an action of suppressing unpleasant fish odor.

¹ It is noted that the Examiner refers to the corresponding published U.S. application for his citations of specific

This action is specific to sucrose acetate isobutyrate, not found in other sucrose fatty acid esters.” Nothing in the prior art of record suggests these unexpected benefits derived by Applicants ‘selection of sucrose acetate isobutyrate as an emulsifying agent for polyvalent unsaturated fatty acids. Accordingly, even if the combination of the Takahashi and Sakurada references are accepted as establishing a *prima facie* case of obviousness, that *prima facie* case of obviousness is effectively rebutted by the Declaration under 37 CFR 1.132 of Makoto Ishikawa.

For the above reason, withdrawal of the rejection of claims 1-6 is in order and is earnestly solicited.

With respect to claims 5 and 6, there is an additional consideration. The Examiner contends that Sakurada discloses an oil-in-water emulsion. Applicants respectfully contend that this is incorrect, and that in fact Sakurada discloses a water-in-oil emulsion, not an oil-in-water emulsion. See column 2, line 37; column 7, lines 32-42 (“mixing the aqueous phase with an oil phase ... to finally obtain a W/O-type emulsion”); and Sakurada claim 11. The Sakurada water-in-oil emulsions are distinct from the oil-in-water emulsions of the present invention. Also, as the Examiner recognizes, Sakurada fails to teach or suggest sucrose acetate isobutyrate. Even if sucrose acetate isobutyrate were taken from Takahashi and employed in the Sakurada emulsions, one would still not have an oil-in-water emulsion as required by claims 5 and 6.

Accordingly, since Sakurada fails to suggest the oil-in-water emulsions of the present invention and since it has been demonstrated that the use of sucrose acetate isobutyrate as required by all of Applicants’ claims provides unexpected beneficial results, the rejection based upon the Sakurada and Takahashi disclosures is not sustainable.

Conclusion

Entry of the above amendments, and due consideration of the above arguments, are earnestly solicited. Early and favorable reconsideration of the merits of claims 1-6 is respectfully requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Richard Gallagher (Registration

disclosure in the Takahashi reference.

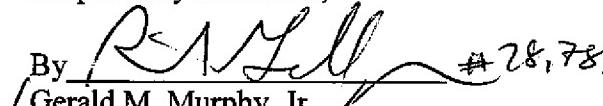
No. 28,781) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: January 31, 2008

GMM/RG

Respectfully submitted,

By  Gerald M. Murphy, Jr.

Registration No.: 28,977

BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Rd
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant